

## § 10.12

(C) Evidence that the Executive Order minimum wage contract clause was included in the contract;

(D) Information concerning known settlement negotiations between the parties, if applicable; and

(E) Any other relevant facts known to the contracting agency or other information requested by the Wage and Hour Division.

(2) [Reserved]

### § 10.12 Department of Labor requirements.

(a) *In general.* The Executive Order minimum wage applicable from January 1, 2015 through December 31, 2015 is \$10.10 per hour. The Secretary will determine the applicable minimum wage rate to be paid to workers performing work on or in connection with covered contracts on an annual basis, beginning January 1, 2016.

(b) *Method for determining the applicable Executive Order minimum wage.* The Secretary will determine the applicable minimum wage under the Executive Order, beginning January 1, 2016, by using the methodology set forth in § 10.5(b).

(c) *Notice.* (1) The Administrator will notify the public of the applicable minimum wage rate to be paid to workers performing work on or in connection with covered contracts on an annual basis at least 90 days before any new minimum wage is to take effect.

(2) *Method of notification*—(i) **FEDERAL REGISTER.** The Administrator will publish a notice in the **FEDERAL REGISTER** stating the applicable minimum wage rate to be paid to workers performing work on or in connection with covered contracts on an annual basis at least 90 days before any new minimum wage is to take effect.

(ii) *Wage Determinations OnLine Web site.* The Administrator will publish and maintain on Wage Determinations OnLine (WDOL), <http://www.wdol.gov>, or any successor site, the applicable minimum wage rate to be paid to workers performing work on or in connection with covered contracts.

(iii) *Wage Determinations.* The Administrator will publish a prominent general notice on all wage determinations issued under the Davis-Bacon Act and the Service Contract Act stating the

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Executive Order minimum wage and that the Executive Order minimum wage applies to all workers performing on or in connection with such contracts whose wages are governed by the Fair Labor Standards Act, the Davis-Bacon Act, and the Service Contract Act. The Administrator will update this general notice on all such wage determinations annually.

(iv) *Other means as appropriate.* The Administrator may publish the applicable minimum wage rate to be paid to workers performing work on or in connection with covered contracts on an annual basis at least 90 days before any such new minimum wage is to take effect in any other media that the Administrator deems appropriate.

(d) *Notification to a contractor of the withholding of funds.* If the Administrator requests that a contracting agency withhold funds from a contractor pursuant to § 10.11(c), the Administrator and/or contracting agency shall notify the affected prime contractor of the Administrator's withholding request to the contracting agency.

### Subpart C—Contractor Requirements

#### § 10.21 Contract clause.

(a) *Contract clause.* The contractor, as a condition of payment, shall abide by the terms of the applicable Executive Order minimum wage contract clause referred to in § 10.11(a).

(b) The contractor and any subcontractors shall include in any covered subcontracts the Executive Order minimum wage contract clause referred to in § 10.11(a) and shall require, as a condition of payment, that the subcontractor include the minimum wage contract clause in any lower-tier subcontracts. The prime contractor and any upper-tier contractor shall be responsible for the compliance by any subcontractor or lower-tier subcontractor with the Executive Order minimum wage requirements, whether or not the contract clause was included in the subcontract.

#### § 10.22 Rate of pay.

(a) *General.* The contractor must pay each worker performing work on or in

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connection with a covered contract no less than the applicable Executive Order minimum wage for all hours worked on or in connection with the covered contract, unless such worker is exempt under § 10.4 of this part. In determining whether a worker is performing within the scope of a covered contract, all workers who, on or after the date of award, are engaged in working on or in connection with the contract, either in performing the specific services called for by its terms or in performing other duties necessary to the performance of the contract, are thus subject to the Executive Order and this part unless a specific exemption is applicable. Nothing in the Executive Order or these regulations shall excuse noncompliance with any applicable Federal or State prevailing wage law or any applicable law or municipal ordinance establishing a minimum wage higher than the minimum wage established under Executive Order 13658.

(b) *Workers who receive fringe benefits.* The contractor may not discharge any part of its minimum wage obligation under the Executive Order by furnishing fringe benefits or, with respect to workers whose wages are governed by the Service Contract Act, the cash equivalent thereof.

(c) *Tipped employees.* The contractor may satisfy the wage payment obligation to a tipped employee under the Executive Order through a combination of an hourly cash wage and a credit based on tips received by such employee pursuant to the provisions in § 10.28.

### § 10.23 Deductions.

The contractor may make deductions that reduce a worker's wages below the Executive Order minimum wage rate only if such deduction qualifies as a:

(a) Deduction required by Federal, State, or local law, such as Federal or State withholding of income taxes;

(b) Deduction for payments made to third parties pursuant to court order;

(c) Deduction directed by a voluntary assignment of the worker or his or her authorized representative; or

(d) Deduction for the reasonable cost or fair value, as determined by the Administrator, of furnishing such worker

with "board, lodging, or other facilities," as defined in 29 U.S.C. 203(m) and part 531 of this title.

### § 10.24 Overtime payments.

(a) *General.* The Fair Labor Standards Act and the Contract Work Hours and Safety Standards Act require overtime payment of not less than one and one-half times the regular rate of pay or basic rate of pay for all hours worked over 40 hours in a workweek to covered workers. The regular rate of pay under the Fair Labor Standards Act is generally determined by dividing the worker's total earnings in any workweek by the total number of hours actually worked by the worker in that workweek for which such compensation was paid.

(b) *Tipped employees.* When overtime is worked by tipped employees who are entitled to overtime pay under the Fair Labor Standards Act and/or the Contract Work Hours and Safety Standards Act, the employees' regular rate of pay includes both the cash wages paid by the employer (*see* §§ 10.22(a) and 10.28(a)(1)) and the amount of any tip credit taken (*see* § 10.28(a)(2)). (*See* part 778 of this title for a detailed discussion of overtime compensation under the Fair Labor Standards Act.) Any tips received by the employee in excess of the tip credit are not included in the regular rate.

### § 10.25 Frequency of pay.

Wage payments to workers shall be made no later than one pay period following the end of the regular pay period in which such wages were earned or accrued. A pay period under Executive Order 13658 may not be of any duration longer than semi-monthly.

### § 10.26 Records to be kept by contractors.

(a) The contractor and each subcontractor performing work subject to Executive Order 13658 shall make and maintain, for three years, records containing the information specified in paragraphs (a)(1) through (6) of this section for each worker and shall make them available for inspection and transcription by authorized representatives of the Wage and Hour Division of the U.S. Department of Labor: